

FILED

JUL 22 2022

Matthew J. Clark
CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

WILLIAM MARTIN ARDENE DECORY,

Plaintiff,

vs.

MOUNUMENT HEALTH HOSPITAL and
THE STATE OF SOUTH DAKOTA;

Defendants.

5:21-CV-05055-CBKORDER FOR COLLECTION OF
APPELLATE FILING FEE

Plaintiff, a prisoner, filed a complaint under 42 U.S.C. § 1983. Plaintiff was ordered to either pay the filing fee or submit a proper motion to proceed in forma pauperis. He failed to do so. On April 28, 2022, I dismissed the complaint for failure to prosecute. He filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. I denied the motion to proceed on appeal *in forma pauperis*.

The United States Court of Appeals ordered plaintiff to pay the appellate filing fee or demonstrate eligibility to proceed on appeal *in forma pauperis*. He failed to do so. The Eighth Circuit dismissed his appeal and remanded the case to this Court for the collection of the appellate filing fee. DeCory v. Monument Health Hospital, et al., 8th Cir. No. 22-2023 (July 14, 2022).

“[T]he assessment of appellate filing fees occurs upon the filing of a notice of appeal or the filing of a motion to proceed in forma pauperis . . . and fixes responsibility for payment sooner or later of the fees in full.” Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). “Irrespective of the court’s approach to the merits of the appeal, the prisoner’s liability for the full payment of the appellate filing fees under the PLRA continues until full payment has been made which may be long after we have disposed of the appeal.” *Id.* Plaintiff must pay the full \$505.00 appellate

filing fee. Pursuant to 28 U.S.C. § 1915(b)(2), plaintiff may pay the full amount of the filing fee in installments.

Now, therefore,

IT IS ORDERED:

1. Plaintiff shall pay the full amount of the \$505.00 appellate filing fee and may do so by paying in installments.

2. Pursuant to 28 U.S.C. § 1915(b)(2), whenever the amount in plaintiff's prison trust account exceeds \$10.00, the institution having custody of the plaintiff is hereby directed to forward monthly payments that equal 20% of the funds credited the preceding month to the plaintiff's trust account to the U.S. District Court for the District of South Dakota Clerk of Court, 225 S. Pierre Street Room 405, Pierre, South Dakota 57501, until the \$505.00 appellate filing fee is paid in full.

3. The Clerk of Court shall send a copy of this order to the appropriate official at the institution where plaintiff is incarcerated.

DATED this 22nd day of July, 2022.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge